

REMARKS

In the Office Action, election is alleged to be required under 35 U.S.C. § 121 to one of the following species:

Species A: Claims 1, 3, 8, 9, 22-24, and 28, directed to a method of designing a fluid dynamic bearing system comprising 1st and 2nd journal bearings.

Species B: Claims 4, 6, 7, 25-27, and 29-34, directed to a method of designing a fluid dynamic bearing system comprising 1st, 2nd, and 3rd journal bearings.

Remarks Regarding Group Election

As recited under M.P.E.P. § 803, restriction is appropriate only when the groups can be shown to be distinct and there would be a "**serious burden**" placed on the Examiner to examine more than one species of claims. No such serious burden has been established and applicant respectfully requests that this restriction be withdrawn.

First of all, both of the claim species relate to fluid dynamic bearing systems. Furthermore both of the claim species require 1st and 2nd journal bearings. Therefore any search performed on Species B, which is directed to a fluid dynamic bearing system comprising 1st, 2nd, and 3rd journal bearings, would inherently include a search covering all fluid dynamic bearing systems comprising 1st and 2nd journal bearings. The Examiner contends that the "claims to the different species recite the mutually exclusive characteristics of such species." However, the two species do not require mutually exclusive searches. Specifically, a search of a fluid dynamic bearing system comprising 1st and 2nd journal bearings includes a search of a system comprising a 3rd journal bearing. Similarly, a search of a fluid dynamic bearing system comprising 1st, 2nd, and 3rd journal bearings would necessarily include a search of a system comprising 1st and 2nd journal bearings. Thus, a *prima facie* case for a restriction requirement has not been met.

Secondly, the Examiner has already completed a search that covered both claim species. In the Office action dated February 12, 2007, the Examiner rejected claims 1-4, 8, 21, and 22 under 35 U.S.C. § 102(b) based on Hijiya et al. (US 4,820,950). Furthermore, the Examiner rejected claims

6, 7, and 9 under 35 U.S.C. § 103(a) based on Hijiya et al. in view of Remmers et al. (US 4,141,603). Both of the rejections cover claims in both claim species and therefore the search conducted to arrive at the rejections had to cover both claim species. Consequently, no burden would be placed on the Examiner to examine both species since such a search has already been completed.

A restriction requirement is imposed only when it would be a serious burden on the examiner to examine all of the claims at once. No serious searching burden has been established and, thus, the burden to impose the election requirement has not been met and remains with the PTO. Withdrawal of the election requirement and examination of all claim groups is respectfully requested.

Remarks Regarding Generic Claims

The Examiner has not identified generic claims or indicated that no generic claims are present as required by MPEP § 809.02(a). Applicants respectfully contend that claim 1 is a generic claim. “[A] generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim.” MPEP § 806.04(d). Claim 1 does not include any elements beyond those of the claims in Species B and all of the claims in Species B require all of the elements of claim 1. Therefore claim 1 is a generic claim. Applicants therefore respectfully request that, should the species restriction not be withdrawn and if the elected species is found to be allowable that the remaining species be examined as well.

Remarks Regarding Prosecution History

In the Office action dated September 10, 2007, the Examiner stated that claims 1, 23, and 30 would be allowable if rewritten or amended to overcome 35 U.S.C. § 112, second paragraph rejections. The Examiner further stated that the remaining claims would be allowable if rewritten or amended to overcome the 35 U.S.C. § 112, second paragraph rejections and to include all of the limitations of the base claims and any intervening claims. Applicants complied with the Examiner’s requests in the Amendment and Response dated December 10, 2007. Therefore, all the claims

should be in condition for allowance and the restriction requirement is moot.

CONCLUSION

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document, and to credit any overpayment, to **Deposit Account No. 14-1437** referencing Docket No. 8209.085.NPUS00. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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